



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

Public Copy

File: [REDACTED] Office: California Service Center Date:

AUG 10 2000

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

In a statement accompanying the petition, the petitioner claims to be "internationally known in several fields, such as automatic control, space propulsion, defense science, robotics, computer and mechatronics." The petitioner asserts that his "present research projects, developing robots to do dirty and dangerous highway work,

are of considerable interest to the US's highway transportation system." Since 1994, the petitioner has worked at the [REDACTED]

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

China's National Committee of Defense Science and Technology awarded the petitioner the [REDACTED], which the petitioner deems "the highest honor in the area of defense science and technology." The petitioner also claims that groups usually receive the award, and "very few scientists have been granted this award individually." The petitioner has documented his receipt of the award but not his representations of its prestige or importance. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The same body identified above also awarded the petitioner the Medal for Devoting Youth to National Defense Science and Technology. The record offers no other information about this award.

While a doctoral candidate, the petitioner received the First Prize of the First Students' Invention Competition from the [REDACTED]. A newspaper article regarding this prize clearly refers to a "province-wide" competition culminating in the prize. The award is provincial rather than national or international.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner documents his membership in several professional associations and societies, but he does not document the membership requirements for those groups. The petitioner is a member of the People's Air Defense Society of [REDACTED] which from its name appears to be provincial rather than national or international. A letter from an official of this society states "[q]ualification for membership is strict and requires high-level conditions," but does not elaborate.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The petitioner, writing in the third person, describes what he considers to be his most important achievements:

He published the first paper on the rocket engine fault monitoring and diagnosis and opened that new research area in [REDACTED]. He was the pioneer in introducing and implementing computer technology into space rocket engine control. He developed [REDACTED] **first rocket engine digital controller** which won him the Science and Technology Advancement Award mentioned above. . . . In the non-linear control theory, he proposed, derived and implemented the Time Width Input (TWI) theory for the widely used PWM (Pulse Width Modulated) control systems. In the robotics area, he solved the nonlinear tracking control problem for mobile robots and successfully applied multimedia, virtual reality, information and internet technologies to robotic machines, which started the evolution of integrated control and information, Internet-enabled machinery.

Five witness letters accompany the petition. Professor [REDACTED] director of the [REDACTED] Research Center, states:

[The petitioner] has been the primary developer of the control system of the multiple tethered robot system. This system employs a set of wheeled mobile robots that are coordinated to accomplish a wide variety of highway tasks. . . . [The petitioner's] unique contributions to this area include the basic control methodologies for the individual wheeled robots as well as the manner in which the multiple robots are coordinated. Furthermore, he has developed a unique user interface so that the complex control algorithms are transparent to the machine operator, which is essential for highway maintenance and construction operations. . . . His multiple tethered mobile robot controller networks the multimedia interface and the several mobile robots together, and one of the most innovative aspects is that his networking can be done through the use of the internet. . . . [The petitioner's] contributions are instrumental toward the growth of this area.

Professor [REDACTED] chair of the Department of Mechanical and Aeronautical Engineering at the [REDACTED] asserts that the petitioner "has made several unique and highly innovative contributions to the scientific development of [robotic highway maintenance] devices specially in the areas of control and human machine interfaces."

[REDACTED] chief of the Advanced Highway Maintenance and Construction Branch of the [REDACTED] (which helped to establish the [REDACTED] Research Center), states that the technology developed by the petitioner has "the potential to revolutionize highway maintenance operations in the future."

Two witnesses discuss the petitioner's endeavors in his native [REDACTED]. Professor [REDACTED] of the [REDACTED] supervised the petitioner's doctoral research. Prof. [REDACTED] states:

[The petitioner] and I published the first paper on the rocket engine fault monitoring and diagnosis on a leading Journal. . . . [The petitioner] not only paved the theoretical basis for the new area, he also soon built an infrastructure for implementing the theory to a space rocket engine under development for our department. . . .

His other major contribution to the rocket engine control during his doctoral researcher is the development of [REDACTED] first digital controller for rocket engines. . . . In shorter than two years, thanks to his electronics talent and hard work, his digital controller had been successfully implemented in our rocket engine experiments and significantly improved the control performance over analog controllers. . . .

In his doctoral thesis there are several important contributions on the non-linear control theory, especially on the modeling, analysis and synthesis of the PWM (Pulse Wave Modulated) control.

[REDACTED] Ph.D., senior process engineer at [REDACTED], met the petitioner at the [REDACTED] in 1995. Dr. [REDACTED] describes the petitioner's work in general, and describes specific ways in which the petitioner has assisted Dr. [REDACTED] but offers no additional information of value not already found in the above letters.

All of the above witnesses have instructed, supervised, or otherwise worked directly with the petitioner. While such witnesses are in the best position to describe the petitioner's work in detail, their statements do not serve as evidence that national experts in the field consider the petitioner's contributions to be of major significance. The petitioner has not

submitted independent evidence to show that his contributions at the [REDACTED] Research Center have already had a major impact on highway maintenance, or attracted sustained attention outside of [REDACTED]

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner has written several published articles and conference presentations. It appears from the record, however, that publication of one's work is relatively common in the petitioner's field. The petitioner has not shown (e.g., through independent citations) that his published work stands above the published work of other researchers in the field.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The petitioner asserts that he has played a leading and critical role for the [REDACTED] Research Center. [REDACTED], identified above, asserts that the [REDACTED] Research Center "has established itself as the international leader in the application of emerging technologies to highway maintenance and construction." The record contains some evidence (such as articles from trade publications) discussing the work of the [REDACTED] Research Center, indicating that its reputation extends beyond the state of [REDACTED]. The petitioner thus appears to have satisfied this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner earns \$2,705 per month, or \$32,460 per year assuming continuous employment. The petitioner states that he receives "one of the highest salary ranks for post-doctoral positions." The regulation requires evidence of a high salary "in relation to others in the field." The petitioner's "field" is not limited to post-doctoral researchers. The petitioner must demonstrate that only the top researchers in the field (whatever their level) earn \$2,705 or more per month. Given that post-doctoral researchers are temporary employees, low in the research hierarchy, such a finding appears to be unlikely.

The director denied the petition, stating that the evidence shows that the petitioner is skilled at his work but not that his "work is looked upon for being at the pinnacle of work in the field."

On appeal, counsel argues that "the quality of [the petitioner's] achievements is widely considered as unparalleled." Counsel fails to identify a source for this assertion.

Counsel states that the appeal contains "new evidence" including "opinions from leading experts in [the petitioner's] field." The five witnesses on appeal, including Prof. [REDACTED] discuss the petitioner's work and assert that the petitioner's achievements place him at the top of his field. Nevertheless, several witnesses claim credentials which dwarf those of the petitioner. For example, Professor [REDACTED] chairman of the Institute of Aeronautics and Applied Mechanics at [REDACTED] has held leadership positions in a number of national and international organizations. Prof. [REDACTED] opines that the petitioner is "a member of the group of top scientists in the robotics community" but does not explain how the petitioner has had a major national or international impact in robotics. Other witnesses offer no indication that they are, as counsel claims, "leading experts in [the petitioner's] field."

Regarding the petitioner's current work in robotics, the witnesses discuss the "implications" of the petitioner's research without demonstrating that the work the petitioner has already done is among the most well-known in the field.

The petitioner submits evidence regarding his work in [REDACTED] with thermal printers, but there is no evidence that this work, however enthusiastically received at the time, has resulted in lasting acclaim.

Counsel cites a [REDACTED] article interviewing [the petitioner] about Internet technology." This description, while technically correct, is profoundly misleading in the context of the article itself. The article in question discusses MP3 technology, which allows users to download music from the internet. The petitioner has had nothing to do with the development of this technology. An excerpt from the article follows.

Forget Walkmans, Discmans or MiniDisc players. To gearheads like [the petitioner], the Rio PMP 300 that he bought two weeks ago from Diamond Multimedia is the future of music. . . . [The petitioner], a 36-year-old [REDACTED] engineer, has already converted his 30 favorite CDs to MP3 files and stored them on his laptop, and he frequently downloads classical music and soft rock from the Internet. . . . "I'll never buy any new CDs for \$16 each," he says.

People like [the petitioner] are making the major record labels shake, rattle and roll. . . . MP3 encoders . . . [have] led to an explosion in the traffic in pirated music.

The remainder of the article does not mention the petitioner, focusing instead on artist and record company reactions to MP3-related violations of federal copyright law. From the above language, it is clear that [REDACTED] did not specifically seek out the petitioner as an expert on the internet; the magazine simply wanted the perspective of an MP3 user who, in the words of the article, listens to "pirated music" rather than purchasing the music from the record companies which own the recordings.

The petitioner, at the time he filed the petition, was a post-doctoral researcher, holding a temporary training position low in the academic hierarchy. The petitioner has shown that his mentors and collaborators are genuinely impressed with his work, and see great promise therein. The record, however, does not consistently demonstrate that the petitioner is among the best known figures in his field, which he must be to qualify for this extremely restrictive classification. The petitioner has begun attracting attention from important figures in the field, and he may ultimately attain sustained acclaim if this trend continues, but he has not yet reached the threshold of eligibility. The Service cannot approve this petition based on such ephemeral and subjective factors as promise or potential.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as an engineer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent in his field, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.